

UNITED STATES DISTRICT COURT

for the

District of New Mexico



FILED
 United States District Court
 Albuquerque, New Mexico
 Mitchell R. Elfers
 Clerk of Court

In the Matter of the Search of
*(Briefly describe the property to be searched
 or identify the person by name and address)*
 Pedro Lee BENALLY,
 year of birth 2000

Case No. **22mr39**

APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

Attachment A

located in the _____ District of _____ New Mexico _____, there is now concealed *(identify the person or describe the property to be seized)*:

Attachment B

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☒ evidence of a crime;
☐ contraband, fruits of crime, or other items illegally possessed;
☐ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section

Offense Description

U.S.C. Title 18 § 1153 Crimes committed in Indian Country
 U.S.C. Title 18 §§ 2241(c) & Aggravated Sexual Abuse of a Minor
 2246(2)(A)

The application is based on these facts:

See attached affidavit, incorporated herein by reference.

☒ Continued on the attached sheet.

☐ Delayed notice of _____ days *(give exact ending date if more than 30 days: _____)* is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Applicant's signature

Lorraine Hardy, Special Agent

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by
 Telephonically Sworn and Electronically Signed *(specify reliable electronic means)*.

Date: 1/5/2023

City and state: Farmington, New Mexico

Judge's signature

B. Paul Briones, United States Magistrate Judge

Printed name and title

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

IN THE MATTER OF THE SEARCH OF:
THE PERSON OF PEDRO LEE
BENALLY (YOB 2000)

Case No. _____

AFFIDAVIT IN SUPPORT OF AN APPLICATION FOR A SEARCH WARRANT

I, Lorraine Hardy, being duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search the person of Pedro Lee Benally (BENALLY), year of birth 2000, to obtain buccal swabs for the purpose of obtaining deoxyribonucleic acid (DNA), and genitals swabs, as well as a blood and urine sample for the purpose of determining if BENALLY currently carries, or did carry during the time period relevant to this investigation, any sexually transmitted infections, including chlamydia.

2. Based on the facts set forth in this affidavit, there is probable cause to believe that BENALLY violated federal criminal statutes, including but not limited to 18 U.S.C. § 1153, crimes committed in Indian Country, 18 U.S.C. § 2241(c) and 2246(2)(A), aggravated sexual abuse. BENALLY's DNA, swabs, and bloodily fluid samples will provide evidence of such crimes.

3. I am currently serving as an FBI Special Agent assigned to the FBI, Albuquerque Division, Farmington Resident Agency, where I primarily investigate crimes that occur in Indian Country to include homicide, aggravated assault, child sexual assault, kidnapping and rape. I have been with the FBI for approximately 4 years. I received on the job training from other experienced agents, detectives, Indian Country criminal investigators, and tribal police

officers. My investigative training and experience include, but is not limited to, processing crime scenes, conducting surveillance, interviewing subjects and witnesses, writing affidavits for executing search warrants and arrest warrants, examining cellular telephones, managing confidential human sources and cooperating witnesses/defendants, serving subpoenas, collecting evidence and analyzing public records.

4. This affidavit is based upon my personal knowledge, witness interviews, information reported to me by other federal, state, and local law enforcement officers during the course of their official duties. Throughout this affidavit, reference will be made to law enforcement officers. Law enforcement officers are those federal, state, and local law enforcement officers who have directly participated in this investigation. This affidavit is also based upon information gained from interviews with cooperating witnesses, whose reliability is established separately herein.

5. This affidavit is intended to show there is probable cause for the requested search warrant and does not set forth all of my knowledge about this matter. The statements in this affidavit are based on my personal knowledge, information that I have received from other law enforcement personnel, and from persons with knowledge regarding relevant facts. Because this affidavit is being submitted for the limited purpose of securing a search warrant, I have not included each and every fact known to me concerning this investigation. I have set forth facts that I believe are sufficient to establish probable cause to obtain the requested warrant.

PROBABLE CAUSE

6. On or about December 5, 2022, the Farmington Resident Agency of the FBI was notified by Child Haven Advocacy Center (CHAC) that Jane Doe a seven-year-old Native American juvenile, year of birth 2015, was brought into Northern Navajo Medical Center

(NNMC) in Shiprock, New Mexico, on December 1, 2022, for treatment of a swollen knee. Jane Doe was diagnosed by a NNMC Emergency Room Physician (hereinafter referred to as C.D.), to be positive for chlamydia, a sexually transmitted infection (STI).

7. During an interview conducted by Navajo Nation Criminal Investigators and the FBI, C.D. indicated Jane Doe was suffering from active arthritis in her right knee, which can be caused by a sexually transmitted infection (STI). C.D. tested Jane Doe for chlamydia, an STI which can cause active arthritis. Jane Doe tested positive for chlamydia. C.D. believed it was highly unusual for a seven-year-old to contract chlamydia any other way than genital contact. C.D. suspected child sexual assault and scheduled Jane Doe for a Sexual Assault Nurses Examiner (hereinafter referred to as SANE) examination.

8. On December 1, 2022, Jane Doe received a SANE exam at NNMC in Shiprock, New Mexico. Jane Doe's exam revealed abnormal findings of her genital examinations, including a swollen and red clitoris, hymen and urethral meatus that was red and tender to the touch, and a thick yellow discharge from the vagina. During the SANE exam, multiple swabs were collected from Jane Doe's body.

9. FBI Farmington Resident Agency scheduled a forensic interview for Jane Doe on December 12, 2022. Jane Doe disclosed her cousin, Pedro Benally (hereinafter referred to as BENALLY), year of birth 2000, used his hands to put his private part into her private part, while having a sleep over outside on the trampoline. Jane Doe stated the last time BENALLY touched her private parts was the night prior on the trampoline. Jane Doe stated it felt "goofy" when BENALLY put his private part into Jane Doe's private part. Something came out of BENALLY's private part that felt wet and Jane Doe did not like it. BENALLY used his private part to touch Jane Doe's private part more than one time.

10. The swabs in Jane Doe's SANE exam kit were sent to the FBI Laboratory in Quantico Virginia, pending forensic analysis.

11. The reported incident took place at Jane Doe's residence located at 2nd Lane Mesa Farm Road, which is within the exterior boundaries of the Navajo Nation, San Juan County, and the town of Shiprock, New Mexico.

12. BENALLY and Jane Doe are both registered members of the Navajo Nation.

SEARCH PROCEDURE

13. Based on my training and experience investigating sexual abuse cases, it is possible BENALLY's bodily fluids and DNA were on Jane Doe's body and subsequently collected by the swabs taken of Jane Doe's body during her SANE exam. The collection of BENALLY's DNA allows further forensic analysis and potential matching with other DNA profiles that may be found on the swabs collected during the SANE examination.

14. Swabbing the inside of the subject's mouth or cheek with a sterile cotton swab and preserving the saliva and cells obtained, also commonly called a buccal swab, is a reliable method for collecting a DNA sample. Your affiant or another individual who is qualified and trained in how to collect a DNA sample and properly preserve to prevent contamination would collect the buccal swab.

15. Based on my training and experience investigating sexual abuse cases, it is likely Jane Doe contracted chlamydia through sexual contact. Considering she disclosed BENALLY sexually abused her, it is possible BENALLY has chlamydia and transmitted it to Jane Doe when the sexual acts took place.

16. Based on my training and experience investigating sexual abuse cases, I have learned that STIs are infections that are passed from one person to another through sexual contact. The causes of STIs are bacteria, parasites, and viruses. There are many different types of STIs,

including chlamydia, genital herpes, gonorrhea, HIV/AIDS, HPV, syphilis, and trichomoniasis, to name a few.

17. Based on my training and experience investigating sexual abuse cases, diagnosis of urethral chlamydia and other STIs in men is typically done with a series of lab tests. In order to conduct the lab test, a urine sample, a blood sample, and a urethral discharge culture obtained by genital swab, are collected from the subject and sent to the lab for testing.

18. A properly qualified and trained medical professional will be utilized to collect the urine, blood, and genital swab samples. The samples will be sent to a medical testing facility.

19. The FBI will use a closed and private room at a law enforcement facility. If a suitable room is not available at the facility, BENALLY will be transported to a medical facility or a federal facility with appropriate accommodations.

20. In the event that BENALLY refuses to cooperate with the collection of these samples, Your Affiant requests authorization from the Court, through the signing of this warrant, to use reasonable force or restraint to the extent necessary to collect the samples.

CONCLUSION

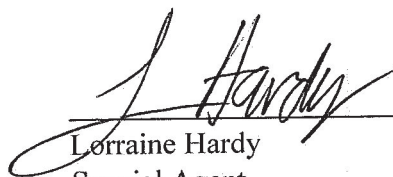
21. Based on my training, experience, and the facts as set forth in this affidavit, there is probable cause to believe that violations of 18 U.S.C. §§ 1153, 2241(c), and 2246(2)(A) aggravated sexual abuse in Indian Country, were committed by BENALLY and that evidence of such violations will be found on the person of Pedro Lee BENALLY, year of birth 2000, through the collection of a buccal swabs for his DNA, a urethral genital culture/genital swab, a urine sample, and blood sample to test for STIs. Said evidence is relevant and material in the context of forensic evaluation with regard to establishing BENALLY's participation in relation to the present investigation.

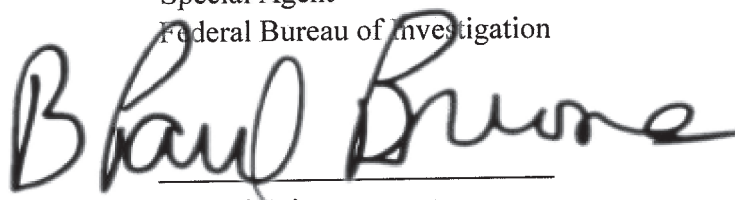
22. I respectfully request a search warrant be issued to search the person of Pedro Lee BENALLY, for the purpose of obtaining DNA to compare with any DNA found on Jane Doe's body as well as for determining if BENALLY currently has any STIs relevant to this case.

23. Assistant United States Attorney Elisa Dimas reviewed and approved this affidavit for legal sufficiency to establish probable cause.

Electronically SUBSCRIBED and telephonically SWORN to me on January _____,

2023


Lorraine Hardy
Special Agent
Federal Bureau of Investigation


B. Paul Briones
United States Magistrate Judge

ATTACHMENT A

PERSON TO BE SEARCHED

Pedro Lee BENALLY, year of birth 2000.



ATTACHMENT B

ITEMS TO BE SEIZED

Buccal swab, urethral discharge culture/genital swab test sample, blood sample, and urine sample collected from the person described in Attachment A, which constitutes evidence of aggravated sexual abuse, a violation of 18 U.S.C. §§ 1153, 2241(c), and 2244(2)(A).

A properly trained and qualified person will be used to collect the buccal swab. A properly qualified and trained medical professional will be utilized to collect the urine, blood, and genital swab samples. The samples will be sent to a medical testing facility.

The FBI will use a closed and private room at a law enforcement facility to collect the swabs. If a suitable room is not available at the facility, BENALLY will be transported to a medical facility or a federal facility with appropriate accommodations.

In the event that BENALLY refuses to cooperate with the collection of these samples, authorization to use reasonable force or restraint to the extent necessary to collect the samples is granted by Court.